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April 13, 2012

Via ECF

The Honorable Therese Wiley Dancks
United States District Court
for the Northern District of New York
Federal Building and U.S. Courthouse
PO Box 7346
Syracuse, NY 13261

**Re: Utica Mutual Ins. Co. v. Fireman's Fund Ins. Co.,
No. 6:09-CV-0853 (DNH/TWD)**

Dear Judge Dancks:

We are counsel for Utica Mutual Insurance Company in the captioned lawsuit.

In connection with the Court's *in camera* review of the six documents identified in Utica's Memorandum of Law in Support of Utica's Motion for Protective Order at page 2, footnote 1 and pursuant to Your Honor's April 10, 2012 Text Order, we request that the Court allow Utica to submit the following additional information for *in camera* review:

- (1) *In Camera* Declaration of Bernard J. Turi in Support of Utica Mutual Insurance Company's Motion for Protective Order; and
- (2) *In Camera* Declaration of Syed S. Ahmad in Support of Utica Mutual Insurance Company's Motion for Protective Order.

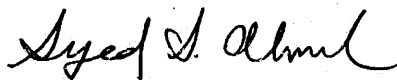
First, these *in camera* submissions are necessary to identify the portions of the six documents over which Utica claims the privilege that is at issue in the pending motion. *See Henry v. Champlain Enters., Inc.*, 212 F.R.D. 73 (N.D.N.Y. 2003) (Treece, J.) (requiring party to submit privileged documents for *in camera* inspection and "identify on the documents what portion of the document is deemed protected and why"); *Medina v. Hunt*, No. 9:05-cv-1460, 2008 WL 398439, at *5 (N.D.N.Y. Feb. 11, 2008) (Lowe, J.) (requiring party to submit privileged documents for *in camera* review and to specifically indicate which parts of the documents party believed was privileged).

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Second, the *in camera* submissions contain privileged information to support Utica's assertion of privilege. See *Henry v. Champlain Enters., Inc.*, 212 F.R.D. 73 (N.D.N.Y. 2003) (Treece, J.) (requiring party to submit *in camera* affidavit containing explanation of how portion of document submitted in camera was protected by privilege); *Johnson Elec. N. Am. Inc. v. Mabuchi N. Am. Corp.*, No. 88-cv-7377, 1996 WL 191590, at *2 (S.D.N.Y. Apr. 19, 1996) (noting *in camera* testimony taken by district judge to resolve privilege claim); *Children First Foundation, Inc. v. Martinez*, No. 1:04-cv-0927, 2007 WL 4344915, at *3 (N.D.N.Y. Dec. 10, 2007) (Treece, J.) (court required party to submit *in camera* affidavits to support assertion of privilege over documents submitted for *in camera* review); *Hammond v. Goodyear Tire & Rubber Co.*, 933 F. Supp. 197, 198 (N.D.N.Y. 1996) (Hurd, J.) (court reviewed *in camera* affidavits and supporting documents); *Hall v. Voyagers Int'l Tours, Inc.*, 2007 WL 2088878, at *2 (N.D.N.Y. July 19, 2007) (requiring party to produce documents to court for *in camera* review accompanied by declaration supporting assertion of privilege); *Marsh v. Safir*, No. 99-cv-8605, 2000 U.S. Dist. LEXIS 5138, at *42-43 (S.D.N.Y. Apr. 20, 2000) (noting that federal courts "have long recognized the appropriateness and value of *in camera* review of materials that disclose to the court the substance of assertedly privileged information"); *In re John Doe, Inc.*, 13 F.3d 633, 636 (2d Cir. 1994) (recognizing that *in camera* submissions were appropriate where necessary to preserve secrecy and affirming district court's review of *in camera* affidavit submitted to support claim of crime-fraud exception to attorney-client privilege); *In re John Doe Corp. v. United States*, 675 F.2d 482, 490 (2d Cir. 1982) ("Where conflicting claims about the confidentiality of evidentiary materials arise in preliminary proceedings, *in camera* submissions provide a method of judicial resolution which preserves confidentiality when justified.").

If the Court provides written approval for the *in camera* submission of these two declarations, Utica will submit them to the Court immediately.

Respectfully submitted,



Syed S. Ahmad

cc: Mary Lopatto